

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

*In Re:* FLINT WATER CASES Case No. 16-10444

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STATUS CONFERENCE  
BEFORE THE HONORABLE JUDITH E. LEVY  
UNITED STATES DISTRICT JUDGE  
and  
THE HONORABLE JOSEPH J. FARAH  
GENESEE COUNTY CIRCUIT COURT JUDGE  
Virtual Hearing Via Zoom - Wednesday, July 29, 2020

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1	<u>TABLE OF CONTENTS</u>	
2	<u>PROCEEDINGS:</u>	<u>PAGE:</u>
3	Court opened	8
4	Remarks by Judge Farah	8
5	Request by Ms. Smith	11
6	Court addresses Motion to Seal	13
7	Remarks by Ms. Weiner	14
8	Court addresses Motion to Amend	22
9	Remarks by Mr. Campbell	25
	Remarks by Mr. Klein	27
10	Remarks by Mr. Washington	31
11	Court addresses Rogers versus Snyder	40
12	Remarks by Ms. Devine	42
	Remarks by Mr. Klein	42
13	Remarks by Mr. Pattwell	43
	Remarks by Mr. Weglarz	44
14	Remarks by Ms. Devine	45
15	Report by Ms. Greenspan	48
16	Court Reporter's Certificate	51
17		
18		
19		
20		
21		
22		
23		
24		
25		

1 Wednesday, July 29, 2020

2 2:10 p.m.

3 -- --- --

4 THE CLERK OF THE COURT: The United States District  
5 Court for the Eastern District of Michigan is now in session.  
6 The Honorable Judith E. Levy presiding. Joined today by the  
7 Honorable Joseph J. Farah of Genesee County Circuit Court.

8 Now calling the Flint Water Cases.

9 THE COURT: Okay. Well, welcome everyone. And this  
10 is the date and time for a status conference to go over some  
11 items that are set forth in the agenda for the hearing.

12 And I want to welcome Judge Farah from Genesee County.

13 Judge Farah, can you now see the screen or are you  
14 still on that limited --

15 JUDGE FARAH: Yes. No, I can see and hear. I've got  
16 a full Hollywood Squares board of participants that I can see.

17 THE COURT: Great. So welcome once again. I just  
18 want to express my continued appreciation that Judge Farah and  
19 I are able to work on the cases together and coordinate between  
20 the federal and the state litigation so that there's the least  
21 amount of repetition and disruption as we just try to  
22 coordinate two very complicated pieces of litigation.

23 So thank you, thank you, Judge Farah, for being here.

24 JUDGE FARAH: Thank you, Judge.

25 THE COURT: Yeah. And if you have anything you want



1 to start out with, I'd be happy to start right there.

2 JUDGE FARAH: All right. I would simply say that we  
3 are available to hear requests. Our typical motion day is  
4 Monday at 10:00, but for this case, all days can be motion  
5 days. We'll work with your schedules and at your convenience.

6 However, we are not interested in hearing any motions  
7 that by their hearing would be inconsistent with what Judge  
8 Levy is doing on the cases. So I think some coordination there  
9 will be important.

10 The one o'clock session we discussed that there was  
11 a motion that had been filed and noticed for a hearing by  
12 Mr. Weglarz on the McLaren legionella cases set for this  
13 Monday, August 3rd. The Court has prerogative to set motions  
14 when it believes it appropriate to hear them and that motion  
15 will not be heard on August 3rd. But we will discuss in this  
16 meeting, if need be, when we can coordinate the hearing of  
17 maybe a similar motion in Judge Levy's court or at least when  
18 we can coordinate the hearing of the motion when it's more  
19 convenient for counsel and the court.

20 If you want something heard and decided, so long as  
21 it's not stepping on the toes of Judge Levy and/or her  
22 scheduling order and case management order, our courtroom is  
23 open for Zoom hearings. Our courtroom is open for live  
24 hearings on motions, but limited to 10 people or less in the  
25 courtroom.

1           So that's where we are right now. And let us know  
2 what we can do.

3           THE COURT: And based on the 63 total participants in  
4 today's hearing, it seems that there would be more than 10  
5 people, potentially.

6           But thank you very much. And I should say just a very  
7 brief word about reconstituting the court in the Eastern  
8 District of Michigan, the federal court. We're moving at a  
9 much slower pace than the Genesee County Circuit Court and so I  
10 just want to caution everybody to be aware of that. We are  
11 going full speed with video teleconference hearings such as  
12 this. But at this point, we're not authorized to be back in  
13 the buildings except as absolutely necessary between the hours  
14 of 10:00 a.m. and 2:00 p.m. and then only if we've had a COVID  
15 test that's negative within four days of our initial entry. We  
16 fill out a questionnaire. We go through processing. And if  
17 you've been out of state within 14 days, you're not permitted  
18 to go in until that 14 days elapses.

19           So the majority of you -- or many, many of you are out  
20 of state. So there's just literally no way I could contemplate  
21 having something in person the way that Judge Farah is able to  
22 do or permitted or even encouraged, I don't know, in Genesee  
23 County. It's a very different situation in the Eastern  
24 District of Michigan Federal Court.

25           But that said, we're doing it so that when we are able

1 to open, we'll be able to do so under the safest possible  
2 circumstances for everybody. So I hope that our -- I hope that  
3 it all pays off, our delay in reconstituting our court so that  
4 the community can be safe and all of you and your families and  
5 those you love can be safe as well.

6 So with that, I just want to welcome everybody to the  
7 hearing. And thank Judge Farah for that. So what we'll do  
8 with that motion, that was -- there was a motion. I think  
9 Mr. Weglarz may have filed it with Judge Farah for an August  
10 3rd hearing. We'll try to coordinate and perhaps doing that  
11 during either the August 5th or August 12th time slot at 2 p.m.  
12 that's already set aside, if there are discovery motions.

13 Is there any -- August 5th may be too soon to get up  
14 to speed on exactly what we need to know. Is there any  
15 objection to potentially working together on that, Judge Farah  
16 and I, at a hearing on August 12th?

17 Ms. Smith?

18 MS. SMITH: Thank you, Your Honor. I just want ...

19 THE COURT: I can't hear you, Ms. Smith.

20 MS. SMITH: Let me double check the calendar to make  
21 sure.

22 THE COURT: Mr. Weglarz?

23 MS. SMITH: I don't anticipate a problem on August  
24 12th. Let me double check the calendar for any depositions.

25 There is a 30(b)(6) deposition scheduled that day, but

1 I'll be available.

2 Nope. No objection, Your Honor.

3 THE COURT: Okay. Mr. Weglarz?

4 MR. WEGLARZ: No objection to the 12th, Your Honor.

5 THE COURT: Okay. And, Judge Farah, are you available  
6 on that day?

7 JUDGE FARAH: I will rearrange some things to become  
8 available. What time would you like that to be heard?

9 THE COURT: I have set aside 2:00 p.m. on my docket.  
10 I can switch my docket, if needed.

11 JUDGE FARAH: Would it be possible? Would it be  
12 problematic for anybody if we heard that at 3:30 instead of at  
13 2:00?

14 THE COURT: Let me just ...

15 No. It's just fine with me.

16 MS. SMITH: That's fine with me as well.

17 THE COURT: Okay.

18 JUDGE FARAH: Mr. Weglarz, is 3:30 okay with you?

19 MR. WEGLARZ: 3:30 is fine, Judge. Thank you.

20 JUDGE FARAH: All right. Thank you. I appreciate it.

21 MR. WEGLARZ: And I just wanted to represent -- I want  
22 to make sure this is clarified. That motion to open discovery  
23 on the state case, that was a motion that we filed back in May.

24 And, Judge Farah, I believe your court did tell us to  
25 request a hearing eventually. So that's why we did that. I

1 didn't want you to think that we weren't following up with your  
2 instructions.

3 JUDGE FARAH: No, no. We don't interpret it that way.  
4 We'll be happy to take a look at it for the 12th at 3:30.

5 MR. WEGLARZ: Great. Thank you.

6 JUDGE FARAH: All right.

7 THE COURT: And, Judge Farah, can you or Samantha  
8 E-mail that my way so I can take a look at it?

9 JUDGE FARAH: Yes. We just had it drawn up and we  
10 have it here in the office. So we'll get it to you.

11 THE COURT: Thank you.

12 JUDGE FARAH: Okay.

13 THE COURT: Okay. So the next thing I wanted to talk  
14 about is a little bit in the weeds, but not too far. It's the  
15 putative class plaintiffs have a motion to seal, which is ECF  
16 number 1204. It's just to seal portions of deposition  
17 testimony and evidence attached to their motion for class  
18 certification. And pursuant to the Sixth Circuit's decision in  
19 *Shane Group versus Blue Cross*, I'm required to make a  
20 determination before sealing a document or granting a motion to  
21 seal.

22 And the Sixth Circuit instructed that there's a strong  
23 presumption in favor of openness. And when we were last  
24 together, someone commented that the Shane Group was also a  
25 class action and so on. So only the most compelling reasons

1 can justify nondisclosure of judicial records and so on. And  
2 that is particularly true in class actions where some members  
3 of the public are also parties to the case and may have a  
4 special interest in following it along and determining whether  
5 they may indeed be a party to the case and so in the future and  
6 should it be certified.

7 So with that said, I've looked at all of the entries  
8 and the ones that I wanted to just hear a little bit more on is  
9 on the deposition of Rhonda Kelso, K-e-l-s-o.

10 There is on page 63 of the filing, which is page ID  
11 34,288. You have suggested that the -- the information on the  
12 blood test should be redacted.

13 And, Mr. Leopold -- or who will be responding on  
14 whether you ...

15 MR. LEOPOLD: Ms. Weiner will be, Your Honor.

16 THE COURT: Okay. Ms. Weiner?

17 MS. WEINER: Yes.

18 THE COURT: You've suggested that the blood test  
19 information should be redacted. And wouldn't this information  
20 be relevant -- important for the public to know whether a named  
21 plaintiff had a blood/lead test and so on?

22 MS. WEINER: We do understand the Court's position. I  
23 think when it comes to plaintiff medical information, we did  
24 seek to seal as much as possible where we thought it might  
25 provide too much personal information or, perhaps, embarrass

1 the plaintiff. And so we did -- I believe what you're looking  
2 at are some proposed redactions where it describes how the test  
3 was done and how it was taken. And so the plaintiffs did wish  
4 to have much of that sealed, but do understand that the Court  
5 also has an interest in making some of this information public.

6 THE COURT: Okay. And I'm fine with her anxiety  
7 medications, the specific medication remaining redacted, but I  
8 think it's quite relevant to the public's interest in this case  
9 to know that there was a blood/lead level taken. That it was  
10 taken from the vein. Because what we're learning is that some  
11 tests may have different degrees of accuracy and ranges and so  
12 on. So I'm going to require that that -- the particular  
13 information about a blood/lead level test be unredacted. And I  
14 don't have a problem with the remaining information. Her  
15 address and so on, that can remain redacted.

16 And then number 83, which is the deposition of Barbara  
17 Davis. Let me go to that.

18 Which is ...

19 And here's where Ms. Davis is talking about the  
20 distress she had from the lack of ability to bathe in the water  
21 and how it impacted her personal hygiene.

22 MS. WEINER: Yes.

23 THE COURT: Yeah.

24 MS. WEINER: I do see -- I apologize.

25 THE COURT: No. You go ahead. Go ahead.

1 MS. WEINER: So, as I said earlier, because some of  
2 this information could be potentially embarrassing to some of  
3 the class plaintiffs they did wish to have it redacted. But if  
4 there are certain parts that the Court -- and certainly much of  
5 this is relevant to the case. That we are, of course, willing  
6 to unredact the portion as the Court wishes.

7 THE COURT: Okay. I think that's very true of this  
8 particular information is that it's very relevant to what  
9 you're alleging here in terms of how your client suffered  
10 during this time period. So I think the information on page 87  
11 and 88 does need to be unsealed.

12 Actually, I mean, I think we can leave out lines five  
13 and six about her bladder issues. So let's leave out five  
14 through nine. But the rest of it I think needs to be unsealed.

15 Oh, on page 80 of the PDF, page ID 34,305, the length  
16 of time she's lived at her residence I think is very relevant  
17 and needs to be unredacted.

18 Okay. Then let's go to the deposition of Darrell  
19 Davis.

20 Hold on.

21 (Reviewing document) And I don't see why this would  
22 need to be sealed that he's aggravated his back and shoulder  
23 from carrying water. These are precisely the damages -- the  
24 sorts of things you're trying to prove and that the public  
25 would have an intense interest in knowing what is it you're



1 bringing in this case.

2 MS. WEINER: To address your question, Judge Levy, we  
3 do understand that that is relevant. And, as I said, we did  
4 seek to balance the class representatives' concerns about the  
5 privacy of their -- any medical information with the public's  
6 interest in this case.

7 The one line there that I would ask that we be able to  
8 keep redacted is the specific name of his doctor.

9 THE COURT: Yeah. I was just going to get to that. I  
10 agree. So we'll leave line 24 redacted. No one needs that.

11 The next one I'm looking at is the deposition of  
12 Tiantha Williams.

13 MS. WEINER: Okay.

14 THE COURT: And I'm on page ID 34,345. This is where  
15 she's establishing the age of her minor child. And there's no  
16 exact age here to identify him. What is the purpose of this  
17 redaction?

18 MS. WEINER: I apologize. I'm not sure which specific  
19 redaction you're referring to.

20 THE COURT: Number 94.

21 MS. WEINER: Yes. Is that the page 82 at the bottom?

22 THE COURT: It is 82 on the bottom, yeah.

23 MS. WEINER: In terms of Ms. Williams' minor child, we  
24 did seek to redact any potentially identifying information  
25 because he is a minor. If there is certain information that

1 the Court would like unredacted, to the extent we can avoid any  
2 identifying information we are, of course, willing to unredact  
3 that.

4 THE COURT: Okay. What I would to do is you can take  
5 out the name of the doctor and the name of the child.

6 MS. WEINER: Okay.

7 THE COURT: But on that page and the next, this is  
8 critical information that the public would have an interest in.  
9 Sort of what types of developmental delays this mother thinks  
10 is attributable to her position in this lawsuit of lead  
11 poisoning. He runs. He tries to run and he falls and so on.  
12 So we can take out Dr. O'Connell and the name of the young  
13 four-year-old, but I think we need the rest of this to be  
14 publicly available.

15 MS. WEINER: Understood. And we can -- as long as we  
16 can keep his name redacted and the identifying information of  
17 the doctor, I believe that will be sufficient.

18 THE COURT: Okay. Now I'm on to number 96 on the  
19 deposition of Frances Gilchrist.

20 MS. WEINER: Yes.

21 THE COURT: And now, this is interesting. This is  
22 where it's going through a tax return. And isn't this what  
23 you're trying to prove is that this business suffered losses as  
24 a result of the Flint water issue?

25 MS. WEINER: Yes. And as I said earlier, we did try

1 to balance where information might embarrass the class  
2 plaintiffs or where they wish for certain personal/financial  
3 information to redacted or sealed. And because the defendants  
4 will have access to this information, it will be able to be  
5 tested and because Rule 26 allows for the -- for a court to  
6 seal information that might be embarrassing to a party or to a  
7 person, we did seek to redact certain financial information  
8 that the class plaintiffs wish to be sealed.

9 THE COURT: This isn't their personal finances. This  
10 is the information from their rental industry and this is what  
11 they're trying to prove in the case. So although it's  
12 embarrassing for your clients to have, you know, perhaps  
13 suffered, you know, during this time period, this is what  
14 they're here to prove. So they're going to have to testify to  
15 it in trial. I mean, so maybe now is the time to start that  
16 adjustment. Particularly, for business.

17 MS. WEINER: Okay.

18 THE COURT: So we'll unseal the business record, the  
19 business losses. I mean, I think -- yeah. That's what they're  
20 here for.

21 MS. WEINER: Understood.

22 THE COURT: Okay. Now I'm on number 98. And this is  
23 just that Mr. H-e-l-m-k-a-y declared bankruptcy.

24 MS. WEINER: Yes. This was related to a 2010  
25 bankruptcy. We sought to redact that.

1 THE COURT: Okay. That's reasonable. I guess -- I'm  
2 -- yeah, right. It is 2010. Okay. We'll leave that redacted.

3 Can I ask you, on number 115, the Excel spreadsheet  
4 with contact information and addresses of lead testing, the  
5 purpose of that is what? The purpose of the redaction is what?

6 MS. WEINER: So what we sought to redact there are the  
7 addresses and contact information of the individuals in the  
8 spreadsheet. Many of them -- most of them are not named  
9 plaintiffs in the case. So we didn't believe it was prudent to  
10 put their contact information -- make their contact information  
11 public. Particularly, since their home address and phone  
12 numbers and E-mail addresses were already in there.

13 MR. NOVAK: Your Honor, may I be heard with respect to  
14 that exhibit because I think I have some additional  
15 information?

16 THE COURT: Yes, please.

17 MR. NOVAK: This is Paul Novak.

18 THE COURT: Yes.

19 MR. NOVAK: If it's the exhibit, I think you're  
20 referring to the Virginia Tech produced data. Virginia Tech  
21 also designated it either as confidential or highly  
22 confidential. So since it was a third-party document and the  
23 third-party producer affixed that level of confidentiality to  
24 it, we felt that there was some obligation to adhere to the  
25 level of confidentiality that they had applied to the data.

1           THE COURT: Okay. And I think at this point I'll keep  
2 it sealed. It has first and last names with addresses and all  
3 this E-mail and so on. And I would just have some concern that  
4 if there's someone out there who doesn't wish one of these  
5 individuals well and is trying to locate their address, I  
6 wouldn't want to be the source of that information.

7           So for now we'll keep that redacted for that reason.  
8 Because if we were to take all of the first names off or  
9 something like that, and the addresses, telephone numbers,  
10 E-mail, there would be not much left here to -- we would not  
11 know where in town these things are. It just wouldn't help the  
12 case -- the public, to understand the strengths of the case.

13           JUDGE FARAH: Judge Levy, if I may interject briefly  
14 on another matter?

15           THE COURT: Sure.

16           JUDGE FARAH: We just got word -- and maybe everybody  
17 knows this.

18           The Michigan Supreme Court just issued a decision in  
19 *Melissa Mays versus Governor* in the Court of Appeals -- or in  
20 the water case. And the Supreme Court, we believe -- and I'm  
21 just getting it handed to me right now. I believe affirmed the  
22 Court of Appeals. Now, I don't know if that has any bearing on  
23 anybody's cases, but it just came out and it looks like it's  
24 not a unanimous decision, but that's not surprising. It's  
25 about 132 pages long so, obviously, we haven't digested it.

1 But if that has any bearing on any situations going on, that  
2 just now got released.

3 THE COURT: Oh, well, thank you for letting us know  
4 that. I was able to listen -- or I guess watched a video of  
5 the argument. That was early March, I think. So thank you  
6 very much for filling us in on that.

7 JUDGE FARAH: Sure. Sure.

8 THE COURT: Yeah.

9 Well, I think that concludes the concerns I had  
10 with ...

11 So, Ms. Weiner, is it clear to you what should be  
12 unsealed in an amended filing?

13 MS. WEINER: I believe so. But if the Court would  
14 issue an order and then we -- would the Court be willing to  
15 issue an order with the lines that it would like unsealed?

16 THE COURT: I think -- yeah. We can do that. Yeah.  
17 And we'll just say for the reasons set forth on the  
18 record.

19 MS. WEINER: Thank you.

20 THE COURT: Okay. Good.

21 The next thing I wanted to go over is the motion to  
22 amend the class action complaint to substitute two different  
23 parties in. And here's -- I've read, obviously, the motion and  
24 response and reply. Responses and reply. And as I understand  
25 it, there are two -- you're seeking to ...

1           Make sure I have the names right. To add an  
2 additional minor child, KC, and a restaurant plaintiff at  
3 635 South Saginaw. And to remove minor child KLD and the  
4 business Epco, E-p-c-o, all caps, Sales. And the VNA  
5 defendants responded strenuously. The city defendants and so  
6 on.

7           The first thing is, I think the motion needs to be  
8 dealt with slightly differently because instead of substituting  
9 these plaintiffs, I think you're going to need to file -- or  
10 you will need to file a motion to withdraw under Federal Rule  
11 of Civil Procedure 42(a) for the two who are withdrawing.  
12 Because I'm concerned that if I were to be dismissing them  
13 with prejudice, if these individuals believed they could later  
14 be a -- should there be a class certification later want to  
15 join one of those classes, they may not be good representatives  
16 for class action purposes as named plaintiffs, but they could  
17 potentially want to make a claim under a class.

18           So not knowing what's happening there yet without the  
19 benefit of the response and reply and adjudication of the class  
20 action motion, I can't just substitute someone in and then have  
21 dismissed with prejudice those two individuals. So I would  
22 require that there be a motion that they have voluntarily  
23 withdrawn from the case.

24           And I, you know, indicated that we would have oral  
25 argument on this, but I have read the briefs and I understand

1 that EPCO was terminated over a year ago by plaintiffs. And  
2 Ms. Brown for her child, KLD, has not been responsive to  
3 discovery requests, and that VNA suggests and argues that there  
4 would be prejudice and undue delay. And that, furthermore, the  
5 claims of these new plaintiffs are significantly different from  
6 those they would be replacing. For instance, South Saginaw  
7 claims lost income where EPCO only claimed property damage.

8 And KLD had alleged lead exposure in utero while KC,  
9 the new plaintiff, alleges harm from his mother drinking the  
10 water.

11 City defendants also weighed in that there would be  
12 prejudice and undue delay. And that, again, that plaintiffs  
13 have known about these deficiencies for sometime and failed to  
14 fix them.

15 Here's my question. Is at this point -- and this is  
16 to VNA and the City. The time line has been pushed back  
17 significantly. And in light of that, I don't see the prejudice  
18 if you need to take these depositions. You did not already  
19 take the deposition of Ms. Brown, as I understand it, so it's  
20 not like that's something that is lost or money that would need  
21 to be compensated for or something.

22 So what is the harm in this now as a -- that there is  
23 additional time in the schedule?

24 MR. CAMPBELL: Your Honor, this is James Campbell. If  
25 I may go first?



1 THE COURT: Sure.

2 MR. CAMPBELL: Thank you. With the change in the  
3 schedule and I think that the submission of the joint  
4 stipulation regarding the class schedule, it does effect the  
5 motion, obviously. The motion and our opposition was filed  
6 before Your Honor took action.

7 THE COURT: Right.

8 MR. CAMPBELL: So that changed it. But I would say,  
9 Your Honor, that with reference to these two are the four  
10 plaintiffs at issue. Two that are no longer going to be  
11 involved in the case and the two that the class plaintiffs  
12 would like to add.

13 Your Honor recounted some of that, but with regard to  
14 Amber Brown and minor child KLD, at least with respect to VNA,  
15 I believe they were dismissed as to VNA on August 1st, 2018,  
16 almost two years ago. Because the alleged exposure was before  
17 VNA arrived in Flint. So the new plaintiff to be added alleges  
18 exposure after that. So to suggest that this is just  
19 something, you know, to substitute, it's not. At least with  
20 respect to VNA and this child.

21 I would add, Your Honor, that in our last discovery  
22 conference that we had, you expressed some issues with  
23 regard -- concern for -- you said something about the minor  
24 subclass of plaintiffs. This plaintiff falls into that  
25 category. So Your Honor left that statement about the minor

1 subclass in your review of the motion, you know, subject to  
2 further discussion or observation from the Court.

3 THE COURT: Yeah. And I'll tell you I have not gotten  
4 to that. So I don't have anything further I can say about it  
5 right now.

6 MR. CAMPBELL: So the point from my perspective would  
7 be to the extent Your Honor is going to -- intending to address  
8 something along those lines, this new plaintiff with respect to  
9 VNA that lays the claims that were not raised, claim that were  
10 not raised that were dismissed, you know, it seems like, yes  
11 there is still a prejudice in that.

12 With reference to the other plaintiff there's the  
13 change from -- EPCO was -- withdrew from the litigation June  
14 25th, 2019, a year ago or so and you already identified the two  
15 different types of claims. Having said all of that, Your  
16 Honor, we believe that there is still -- is a prejudice for  
17 those reasons. But if Your Honor is inclined, given the  
18 extension of the class schedule, we would request -- we need to  
19 issue discovery to these two individuals, two new plaintiffs  
20 that would include interrogatories and document requests.

21 And I would add that there's reference here in these  
22 papers that Ms. Brown was not deposed. And at least with  
23 respect to VNA, the reason why that didn't happen is because  
24 she was dismissed from claims against VNA.

25 THE COURT: I wasn't thinking there was any laziness

1 by anyone, anyone at all. No. No. No. No.

2 MR. CAMPBELL: So that's the background to that. And  
3 so the written discovery and given the stipulation, I believe,  
4 the state defendants are intending to redepose the class  
5 plaintiff representatives anyway.

6 THE COURT: Right.

7 MR. CAMPBELL: But the point is we would have to do  
8 this. And I would like to add that these amendments were made  
9 on the day that the class motion was filed. And at that point  
10 in time the issue's, well, we had to do expert discovery  
11 starting right away. And these were issues that teams like  
12 they should have been brought up long ago with the amendments  
13 rather than on the day that the motion was filed.

14 So other than that, Your Honor, the arguments in our  
15 brief, that's what we have to say.

16 THE COURT: Okay. Thank you.

17 MR. KLEIN: Your Honor, if I can very briefly add. I  
18 don't agree with anything that Mr. Campbell said. From memory  
19 it was either a day or two days -- we filed these oppositions a  
20 day or two days before there was scheduled relief.

21 THE COURT: Right.

22 MR. KLEIN: The only thing I would add is I think it  
23 would help if there was an expedited time for responding to  
24 written discovery. We have some schedule relief, but it's  
25 still not all that much time to start from fresh, start from

1 scratch with responses to the written discovery, which we need  
2 before we can go into deposition.

3 THE COURT: Okay. Thank you.

4 Well, I will grant the request, but I'll require that  
5 plaintiffs file a motion under Rule 41(a) for withdrawal of the  
6 two named plaintiffs and then I will grant the motion pursuant  
7 to Rule 15(a).

8 And the briefs that came in opposing this noted that,  
9 generally, courts deny motions to add or substitute class  
10 representatives prior to class certification. And I looked at  
11 those. I understand the reasons, but here there are also cases  
12 where courts have granted motions to amend to add new  
13 plaintiffs or even defendants before the class is certified.

14 And these cases that allow pre-class certification  
15 substitution of claims of some plaintiffs who, for one reason  
16 or another, were not going to serve adequately as named  
17 representatives in the party -- in the case. And then  
18 certainly you would need to have discovery regarding those  
19 plaintiffs.

20 So, for that reason, I will permit this. Because what  
21 could otherwise end up happening is in the response brief, I'm  
22 going get a motion saying that there's an inadequate business  
23 class representative, for example, and then we're going to be  
24 right where we are anyway.

25 So I'd rather get this done efficiently. So I'll look

1 for a Rule 41(a) motion from plaintiffs and then for the  
2 reasons that are now on the record, the motion to add the two  
3 named plaintiffs that you're seeking will be granted.

4 And on the issue of a minor class I just have not had  
5 the time to turn to that. And at the point that I do, I may  
6 request supplemental briefing on that before people get too far  
7 down the road on it. So that'll permit me to manage the motion  
8 in smaller chunks, I hope. And we will go from there.

9 MR. SHKOLNIK: Judge Levy?

10 THE COURT: Yes.

11 MR. SHKOLNIK: This is Hunter Shkolnik, if I can just  
12 be heard on this. With respect to a Rule 41(a) motion to  
13 dismiss, the *Brown* plaintiff is not seeking to dismiss her  
14 case. And I don't think class counsel really have a standing  
15 to make that motion since it's our client.

16 THE COURT: Okay.

17 MR. SHKOLNIK: She does not wish to be a class  
18 representative and fall within some type of class. So I think  
19 it needs to be dealt with slightly different.

20 THE COURT: How should it be dealt with?

21 MR. SHKOLNIK: I would think that she could be  
22 struck -- stricken -- stricken as a class rep, but that the  
23 plaintiffs' individual claim should be allowed to proceed.

24 THE COURT: That's what I wanted to achieve.

25 MR. SHKOLNIK: And we would be happy to stipulate to

1 that as counsel. We have the client's approval to do that.

2 THE COURT: I don't have 41(a) open, but I think you  
3 need the defendants' --

4 MR. SHKOLNIK: I think we need the defendants'  
5 agreement.

6 THE COURT: I think so.

7 MR. SHKOLNIK: After an answer has been filed, if I'm  
8 not mistaken.

9 THE COURT: Yeah. Hold on.

10 MR. SHKOLNIK: That's without a court order. But with  
11 a court order you can do whatever you like.

12 THE COURT: Yeah. And there will be a court order.

13 Okay. She's only being voluntarily dismissed from  
14 this action as a named plaintiff. That's a stipulation of  
15 dismissal signed by all parties who have appeared.

16 That's without a court order?

17 MR. SHKOLNIK: Without a court order would be a  
18 dismissal signed by all parties.

19 THE COURT: Yeah.

20 MR. SHKOLNIK: With a court order, on the terms the  
21 Court considers proper.

22 THE COURT: Okay. Yeah. And the terms would be that  
23 she's only removed as a named plaintiff but not dismissed from  
24 any other roles she wishes to have in the litigation including  
25 either as an individual or class member, whatever it is, she's

1 going to pursue.

2 MR. SHKOLNIK: Thank you, Your Honor.

3 THE COURT: Okay. So when can I get that?

4 MR. SHKOLNIK: Can we have until the end of next week?

5 THE COURT: Yes.

6 MR. SHKOLNIK: Thank you. That would be -- I'm  
7 looking at the calendar.

8 The 7th?

9 THE COURT: Yeah.

10 MR. SHKOLNIK: Thank you.

11 THE COURT: That would be good.

12 MR. WASHINGTON: Judge, this is Val Washington. I  
13 represent EPCO individually and I just want to make sure that  
14 the same kind of blanket that you're giving to Mr. Shkolnik  
15 would apply to EPCO as well, Judge.

16 THE COURT: Oh, okay. I didn't know that. Yes. It  
17 would apply to EPCO as well.

18 MR. WASHINGTON: Thank you, Judge.

19 THE COURT: Yeah. There will be until the 7th to  
20 enter this stipulation.

21 MR. SHKOLNIK: Thank you.

22 THE COURT: Okay. Then the MDEQ defendants submitted  
23 a proposal for the time line to be triggered for their role in  
24 both the *Carthan versus Snyder* and the bellwether cases.

25 And is there -- has everybody had an opportunity to

1 review that?

2 MR. KLEIN: Yes, Your Honor.

3 THE COURT: So in *Carthan*, the MDEQ defendants filed  
4 their answers on July 15 and proposed that they be placed on  
5 the same schedule as the state defendants. And that makes good  
6 sense to me. So hearing no objection to that, we'll do that.  
7 And you're also seeking to have the Rule 56 summary judgment  
8 motions be determined after class certification has been  
9 decided. That makes sense to me also. Because I can't do both  
10 at the same time.

11 Okay. So then the bellwether cases, who's going to  
12 speak for the MDEQ defendants here?

13 MR. BARBIERI: Your Honor, this is Charles Barbieri.  
14 As an outgrowth, a part of the discussion at the telephonic  
15 status conference, there was anticipation that if the result  
16 was the same in the Sixth Circuit decision on *Walters* and *Sirls*  
17 that the issue of how that would occur from a discovery  
18 standpoint following the answer, we tried to get some idea on  
19 what the schedule could be. To some extent it's copied or  
20 modeled after --

21 THE COURT: Right.

22 MR. BARBIERI: -- it was put together. That was an  
23 intention about what was submitted and, obviously, we're still  
24 at a disadvantage of not having any mandate, if there's going  
25 to one issued at this point. So it may be premature but we



1 didn't know at the time so we submitted it in addition to the  
2 *Carthan* schedule that Your Honor has reviewed by way of our  
3 submission and then also by the VNA stipulation that Your Honor  
4 has in front of her.

5 THE COURT: Okay. Is there any objection to that  
6 proposal that Mr. Barbieri just outlined and is set forth in  
7 his submission?

8 (No response.)

9 THE COURT: Okay. So we will ...  
10 Is somebody speaking?

11 MR. STERN: I said, no, Your Honor. But I was muted.

12 MR. KLEIN: Yeah. Same here.

13 THE COURT: Then that's what we'll do is adopt this  
14 proposal.

15 MR. KLEIN: I'm sorry, Your Honor. This is Sheldon ...

16 THE COURT: Okay. Go ahead, Mr. Klein.

17 MR. KLEIN: (No audio.)

18 THE COURT: You're muted.

19 You're still muted.

20 MR. KLEIN: Can you hear me now?

21 THE COURT: Yes.

22 MR. KLEIN: Zoom is a mysterious thing sometimes.

23 THE COURT: I know. Sometimes when you unmute, it  
24 mutes. It has a mind of its own.

25 MR. KLEIN: Here's my concern -- and first of all, if

1 I can take a step back in terms of the summary judgment  
2 schedule. And this is just a question. Is this now that MDEQ  
3 is on a separate summary judgment track than everyone else or  
4 the overall schedule is being pushed back?

5 THE COURT: Okay. What is -- I don't recall that we  
6 ever set -- did we set a deadline for summary judgment?

7 MR. BARBIERI: No, Your Honor. When I submitted it,  
8 the dilemma we were facing, is similar to what the state  
9 defendants were facing.

10 And Mr. Kuhl, if you recall, at the last status  
11 conference expressed the concern that he wanted to have the  
12 ability to bring a summary judgment after whatever discovery  
13 needs to be accomplished. The MDEQ defendants, although on a  
14 little bit different schedule, but it's going to be merged now,  
15 had the same desire.

16 I'm not trying to foreclose what the City defendants  
17 have in mind or anticipate by that, but I was only reacting to  
18 what was out there for the State defendants and seeing how that  
19 folded into it. I apologize if I didn't take into account the  
20 City defendants, too, in that.

21 THE COURT: Well, I don't think an apology is needed,  
22 but thank you.

23 So, Mr. Klein, I don't think we have a schedule for  
24 summary judgment at this time. And we need one.

25 MR. KLEIN: Okay.

1 THE COURT: Okay.

2 MR. KLEIN: But whatever the schedule might be, are we  
3 on dual tracks for summary judgment.

4 THE COURT: I don't think so. I think we have to have  
5 one track.

6 MR. KLEIN: So that leads to my second concern. And  
7 perhaps I misunderstand Mr. Barbieri's plan. But, as I follow  
8 along, it seems to me that we wind up having a second -- a  
9 whole second, essentially, duplicative bellwether trial against  
10 the MDEQ defendants.

11 THE COURT: We're not going to do that.

12 MR. KLEIN: And I see Mr. Barbieri shaking his head.

13 MR. BARBIERI: That was not my intention, Mr. Klein.

14 MR. KLEIN: So you are just a conscientious objector  
15 from the bellwether process; is that fair? I mean, these are  
16 real questions.

17 THE COURT: No. These are good questions. These are  
18 my questions.

19 Let's ask Mr. Stern and Mr. Shkolnik what we're going  
20 to do to make sure we're not doing two sets of the first set of  
21 bellwether trials.

22 MR. STERN: Your Honor, this is Corey Stern. I guess  
23 I've always felt without any real evidence to support this that  
24 once it came time for the bellwether trials if, for instance,  
25 the state's case or cases were still on appeal or the DEQ

1 individual defendants or anybody from the DEQ was up on appeal,  
2 that because these were bellwether trials where it's clear that  
3 apportionment of damages and liability would become part of the  
4 defense and likely be presented to the jury, that those  
5 defendants that were ready for that trial -- because, again,  
6 these are bellwether trials.

7 THE COURT: Right.

8 MR. STERN: To make certain determinations that those  
9 defendants that were ready for the trial would try the case.  
10 And I guess I always assumed under the posture of the  
11 litigation that that would most likely be VNA and LAN on that  
12 first round of the trials and we would still be able to get a  
13 relatively instructive determination about values and liability  
14 in light of the fact that the claims and defense is litigated  
15 by those defendants would be applicable to the other  
16 defendants.

17 So when I see proposals that are verging on postponing  
18 bellwether trials, I've never gotten overly worked up about it  
19 because Your Honor has seemed to seemingly indicated over time  
20 that we would go forward with who was there. And I think there  
21 was passive understanding, at least amongst counsel, that  
22 there's a likelihood that not all defendants are participating  
23 in the first bellwether. That doesn't mean that we need to  
24 relitigate the bellwether cases, the first round against those  
25 defendants who don't participate. Because, again, those

1 bellwether trials are more instructive than really, you know,  
2 anything else.

3 So I don't want to put any defendant in a position  
4 where they're litigating with a hand tied behind their back. I  
5 also don't think that any defendant who joins later than others  
6 is going to require the bellwethers to be paused or postponed.

7 THE COURT: Okay.

8 MR. STERN: So when I see a proposal from Mr. Barbieri  
9 that borders on some of the concerns validly that Mr. Klein  
10 has, I don't share those concerns so long as we're able to  
11 proceed against whichever defendants are prepared to proceed.

12 THE COURT: Okay. So I guess we don't have to make a  
13 decision about that at this point.

14 MR. BARBIERI: Your Honor, Charles Barbieri, again. I  
15 think it is still premature. The mandate will come out at some  
16 point.

17 THE COURT: Right.

18 MR. BARBIERI: We'll go on a schedule. I think we  
19 are in a different phase than the first bellwethers. That's,  
20 respectfully, the point that we've been making and I suspect  
21 that would be shared if the state defendants share similarly.

22 THE COURT: Okay.

23 MR. STERN: And I'm excited to see Mr. Campbell and,  
24 potentially, Mr. Mason drive up the values of the cases against  
25 the other defendants by way of their nonparty fault arguments,

1 and they could probably do it much better than me. So I'd like  
2 to team up with them on that.

3 THE COURT: There you go.

4 MR. KLEIN: I get we're not making a decision. I have  
5 two concerns. One, I think has been alleviated that,  
6 basically, the MDEQ and other nonparticipating defendants would  
7 kind of get to watch a dress rehearsal for their trial and that  
8 seems fundamentally unfair. But that seems to not be anyone's  
9 idea.

10 The other is at least with respect to the city, it's  
11 unfair to not have the other governmental defendants and,  
12 frankly, in particular, the MDEQ defendants, up there with us.  
13 I mean, it's no secret to anyone that, you know, at least  
14 there's a possibility, if not a likelihood, that the jury might  
15 be faced with a choice as to whether it is MDEQ or the city  
16 that bears primary responsibility for some of what went on here  
17 and for MDEQ to be absent from the trial makes it very  
18 difficult to fairly frame that question for the city.

19 MR. STERN: Your Honor?

20 THE COURT: Well, I don't think we have to decide.  
21 We're just going to put that off for another day, figure out  
22 when *Walters* and *Sirls* gets decided what is said and then we'll  
23 wait for the mandate and we'll just -- we'll just put that off  
24 for another day.

25 MR. KLEIN: That's fine. Yeah, I wasn't asking for a

1 decision. I wanted to explain why there's some heartburn here.

2 THE COURT: Yeah. I understand.

3 MR. CAMPBELL: Your Honor, if I may, this is James  
4 Campbell for VNA. To state the obvious, I don't think that  
5 having serial trials for the same set of plaintiffs or the same  
6 plaintiff is going to --

7 THE COURT: We're not going to. What I heard  
8 Mr. Stern say is you all will be up there defending your case,  
9 those who are ready to go. And for the first round of  
10 bellwethers, you'll be doing everything you can to shift the  
11 blame to whoever is not there and there will be a verdict. And  
12 in the sense of a bellwether trial, it will be an indication to  
13 all of us of what might be coming down the pike in the case in  
14 future trials. And then we'll move on to the next round. And,  
15 hopefully, all the defendants will be at the table by then.

16 MR. SHKOLNIK: Judge Levy, interestingly, this issue  
17 recently was brought up before the Sixth Circuit on a writ in  
18 the opioid litigation. Because certain claims in certain  
19 parties were severed out before trial and that case ended up  
20 settling and then the judge issued a ruling saying now we're  
21 going to go to trial against the next set of defendants for the  
22 same plaintiffs.

23 Basically, the Sixth Circuit said there's nothing  
24 wrong with it. We're not suggesting try the case against those  
25 remaining defendants. But this is really not a significant

1 issue. It happens sometimes some parties are just not ready  
2 for trial and the Court can decide what parties, what claims go  
3 forward.

4 THE COURT: I think that's going to have to happen.  
5 Because as I look at the lawyers for the government for the  
6 United States, the EPA case is behind everybody. So we're just  
7 going to have to keep going forward on everything that's ready  
8 to move forward. And then we'll have -- those defendants who  
9 are still in the case will catch up and be in the next round.  
10 So it'll be like one of those brackets in sports that I know  
11 nothing about, but somehow somebody's going to be in the final  
12 bracket in the win/lose column. So we'll just keep working our  
13 way towards that.

14 So we'll adopt the dates that are in the submission  
15 from the MDEQ defendants for now. And then await the *Walters*  
16 and *Sirls* decision from the Sixth Circuit and the mandate.

17 So I want to move on to the *Rogers versus Snyder*.  
18 This is sort of a different level of issue. And in this I had  
19 issued a show cause why the case should not be dismissed for  
20 failure to prosecute and follow the Court's order with respect  
21 to amending it.

22 And so on July 17th, I think Mr. Weglarz filed a  
23 response that included a motion to amend the complaint. And  
24 Mr. Weglarz had indicated that he had made a mistake about the  
25 filing the amended complaints because he thought the June 3rd



1 deadline was permissive and not a mandatory requirement.

2 But, of course, Mr. Weglarz was at that hearing and so  
3 that's neither here nor there. I don't accept that  
4 explanation. But the fact is, it's now filed and there is  
5 significant -- in his proposed amended complaint, he has  
6 eliminated some of the conspiracy claims and so on that were  
7 not viable and has instead amended his complaint to no  
8 longer be suing Mr. Cook and Mr. Dillon, but he has retained  
9 Mr. Ambrose, Mr. Wurfel and then added VNA.

10 And Ambrose and Wurfel were dismissed in the *Brown*  
11 litigation. And, of course, that was because *Brown* had passed  
12 away before Ambrose was appointed to be an emergency manager so  
13 he couldn't have done anything wrong in that particular case,  
14 but the timing is different in this case. Mr. Wurfel was  
15 dismissed in *Marble* because the statements that he's liable --  
16 you know, there's a claim stated against him for had happened  
17 after both *Marble* and *Brown* had passed away. And VNA, there's  
18 nothing different.

19 So I am inclined at this point, despite the fumbling  
20 around and getting this done in an efficient manner, to grant  
21 the motion to amend. And if -- because at this point we have  
22 finally a cleaned-up complaint that conforms to the Court's  
23 requirements and to the law and to the previous decisions in  
24 the case.

25 And I would not require the defendants to file a new

1 motion to dismiss, but if you want to file a supplemental  
2 brief, you may. So tell me, if anyone wishes to, what's wrong  
3 with that.

4 MS. DEVINE: Your Honor, if I may, this is Alaina  
5 Devine for the VNA defendants.

6 THE COURT: Yes.

7 MS. DEVINE: I would point out that we, obviously,  
8 haven't had an opportunity to respond to the motion to amend  
9 the complaint or the amended complaint itself, but there was  
10 one significant difference in the motion to amend and in the  
11 amended complaint with respect to the allegations that are  
12 being made.

13 In the original complaint that was filed in *Rogers*, it  
14 was alleged that the plaintiff contracted legionnaires disease  
15 in the fall and winter of 2014. We filed our motion to  
16 dismiss. We notified attorney Weglarz of the issue. Asked for  
17 VNA to be dismissed from the case because that was, obviously,  
18 prior to the time that we were involved in Flint.

19 The allegations in the amended complaint changed the  
20 date in which it's alleged that the plaintiff contracted  
21 legionnaires disease and it's now in later spring to summer of  
22 2015. So I would point out the allegations in the amended  
23 complaint, it's not just a matter of conforming it to the  
24 Court's requirements, but they've actively substantively  
25 changed.

1           THE COURT: So, then, you can certainly file a new  
2 brief. You're not -- I'm not holding you to your original  
3 brief when the facts were different and your client wasn't  
4 there. So you can certainly file a new motion, if you think  
5 that's the appropriate thing to do.

6           MR. KLEIN: Your Honor, Sheldon Klein again.

7           THE COURT: Okay.

8           MR. KLEIN: And the same, whether this will be a brief  
9 from Mr. Ambrose's counsel or the city or both, I haven't fully  
10 thought through, but with respect to Mr. Stern, the readdition  
11 of Mr. Ambrose, I think there's real question to whether it  
12 applies from a pleading standpoint. So if we can have a date  
13 by which to file a -- I suppose it would just be a 12(b)(6)  
14 motion.

15           THE COURT: Absolutely. How much time do you need?

16           And the same for Ms. Devine.

17           MR. PATWELL: I'm sorry to interrupt, but just to sort  
18 of add -- Mike Patwell on behalf of Brad Wurfel.

19           THE COURT: Okay.

20           MR. PATTWELL: I also shared the same comment. The  
21 date alleged in even the amended complaint as to when the  
22 plaintiff contracted legionnaires disease is prior to any  
23 public statement made -- or alleged to be made by Mr. Wurfel.  
24 So we would like to also, whether file a brief or --

25           THE COURT: Let's stop right there and just have

1 Mr. Weglarz answer to that.

2 If that's the case, let's agree right now to dismiss  
3 *Wurfel*. I don't need more briefs and no one needs to write  
4 more briefs. So what date did your client contract  
5 legionnaires disease in *Rogers*?

6 MR. WEGLARZ: Your Honor, we allege it's between the  
7 end of March of 2015 and May 29th of 2015. That's when she was  
8 exposed.

9 THE COURT: And, Mr. Weglarz, when was the conduct by  
10 Mr. Wurfel, when did that take place that you're suing him  
11 over?

12 MR. WEGLARZ: Your Honor, we're just relying on the  
13 facts as set forth in the most recent amended pleading.

14 THE COURT: I know. But I don't recall. I can't  
15 remember the exact date of his remarks.

16 MR. WEGLARZ: And, Your Honor, I don't have that here  
17 in front of me. I apologize. I will have those dates.

18 THE COURT: Okay. That's okay. Mr. Patwell will  
19 know.

20 MR. PATTWELL: July 10th, 2015 is my understanding of  
21 the first public comment.

22 THE COURT: So what I want you to do, Mr. -- thank  
23 you, Mr. Patwell.

24 What I want you to do, Mr. Weglarz, is check that.  
25 The Sixth Circuit has already ruled on Mr. Wurfel and what

1 comments constituted liability. Or, you know, not liability.  
2 But were properly pled or plausible, et cetera. So if it's  
3 July 10th, do you agree you would have to dismiss your *Wurfel*  
4 from *Rogers*?

5 MR. WEGLARZ: I Would agree, Your Honor.

6 THE COURT: So I will give you until August 7th to  
7 check that and file a notice -- a new amended complaint.

8 MR. WEGLARZ: Could I just submit a stip?

9 THE COURT: Yeah, you can.

10 MR. WEGLARZ: Thank you.

11 MS. DEVINE: Your Honor, I would ask until August 12th  
12 to file a motion to dismiss or an answer on behalf of the VNA  
13 defendants.

14 THE COURT: Okay.

15 MR. GRASHOFF: Your Honor, on behalf of the MDEQ  
16 employee defendants, this is Phil Grashoff.

17 THE COURT: Uh-huh.

18 MR. GRASHOFF: We would like that same extension until  
19 August 12th to take a look at this amended complaint and renew  
20 our motion to dismiss or supplement it if we determine to make  
21 that decision.

22 THE COURT: Absolutely.

23 MR. KIM: Your Honor, for the City defendants, August  
24 12th will work for us as well.

25 MR. MASON: Can you just make that blanket for the

1 named defendants?

2 THE COURT: Yes.

3 MR. MASON: You said you believed that the amended  
4 complaint complied with your prior rulings in the other  
5 matters. That's the primary issue for us with respect to some  
6 of these claims and, additionally, with the *Williamson* matter  
7 that we discussed a little bit earlier.

8 THE COURT: Yes. Now, let me -- so that's what we'll  
9 do with *Rogers*. I'll permit the amended complaint, but require  
10 that by the 7th we figure out whether Mr. Wurfel is -- whether  
11 plaintiff will stipulate to his dismissal based on what we  
12 think the timing is.

13 But earlier, when we had our meeting so-called in  
14 chambers, the *Gladys Williamson* case was brought up and the  
15 *Bacon* case. On *Bacon*, I think the last time we were together I  
16 had indicated that I would decide those motions on the briefs.

17 And they are fully briefed. I think Mr. Mason was  
18 bringing that up to me earlier. They're fully briefed now and  
19 I'll be able to decide those motions on the briefs.

20 And *Williamson*, I've got up on my ...

21 MR. GRASHOFF: Your Honor?

22 THE COURT: Yes.

23 MR. GRASHOFF: Phil Grashoff. *Williamson* filed a  
24 stipulation that we agreed to extend their date for filing that  
25 was due today until I believe the 19th of August.

1 THE COURT: Okay. So, yeah. Thank you.

2 And so, in addition, it was Mr. Mason had a pending  
3 motion and so that motion is not -- there's one pending that is  
4 ECF number 38. It's not a motion on the basis of statute of  
5 limitations. It's generally setting forth your previous  
6 arguments that punitive damages is not a count. Joint and  
7 several liability, so on. It's one of your more standard  
8 motions. So that will be dealt with as well.

9 MR. MASON: If I may, Your Honor?

10 THE COURT: Sure.

11 MR. MASON: The response in *Williamson*, they have  
12 acknowledged that they are now not asserting punitive damages  
13 or joint and several liability. So the only issue for our  
14 motion is the exemplary damages, which we believe you have  
15 already ruled on in your prior decisions and so. Just to help  
16 the Court short circuit that.

17 THE COURT: Thank you.

18 MR. MASON: That's the issue in *Williamson*. The other  
19 cases that I have a note about with pending motions, legionella  
20 motions, are *Lee*, of course, *Rogers*. *Long*, *Bacon* and  
21 *Williamson*.

22 THE COURT: Okay. We'll be taking a look at them.

23 MR. MASON: Thank you, Your Honor.

24 THE COURT: How about we turn to Deborah Greenspan,  
25 who is constantly working in the background.

1 And, Ms. Greenspan, do you have a report to make?

2 MS. GREENSPAN: I have a very brief report, Your  
3 Honor. I will go through this quickly. We, as you know, every  
4 month, every day, really, we get updates to the submissions  
5 that counsel have made to the census process, which is why  
6 we're constantly updating everything.

7 Just to give you an idea. Since the third report was  
8 filed, we've received updates in 3,000 claim records. So we  
9 don't just get new claims. We get clarifications, updates,  
10 changes in the claims, which is why you see changes in the  
11 statistics and the reports.

12 So right now we're tracking. We're very close to  
13 where we were last month. We're tracking 25,330 individual,  
14 what we're calling injured parties. There are some within that  
15 group that we've identified as potentially the same person  
16 represented by different lawyers. And we have been tracking  
17 that and we've got now, again, updated lists of those different  
18 claims, which we'll be circulating to counsel.

19 Of that total we have 8,382 are children. Again,  
20 based on the dates of birth information that we've been given.  
21 And I will note that we do have claims that don't have a date  
22 of birth. So that number could grow if we get actual date of  
23 birth information for some of those missing -- some of those  
24 that are missing that information.

25 Again, over the last couple of months since the



1 last report, we had 3,750 new claims added to the list. And  
2 we -- they're primarily, personal injury claims. But I do note  
3 that about a third of the newer claims assert a property damage  
4 claim as well.

5 THE COURT: Okay.

6 MS. GREENSPAN: So, again, still heavily personal  
7 injury claims, but it seems to me to be some increasing numbers  
8 of property damage claims that are being asserted.

9 And that's really my report for today. Thank you,  
10 Your Honor.

11 THE COURT: Okay. Thank you.

12 Well, thank you very much.

13 One thing I wanted to mention is I think I might have  
14 gotten the first ever stipulated motion for clarification and  
15 proposed order that came in just as expected and everyone  
16 agreed to it and so I wanted to commend everyone for that.  
17 It's ECF filing 1215. So there is a proposed schedule here,  
18 that we have already discussed, which will be adopted.

19 So that is what we will do. I'm thankful for that.  
20 So the next status conference that I have set aside is  
21 Wednesday, August 26th at 2:00 p.m., also by video  
22 teleconference with the dates for submitting proposed items for  
23 discussion set forth in the agenda.

24 So is there anything we have not discussed that needs  
25 to be discussed?

1 All right. That is very good. Well, I hope that  
2 everybody continues to stay safe and healthy. We will each be  
3 doing our part to take care of our own communities and families  
4 by doing that.

5 So thank you very much. And I will -- well, right now  
6 I have time set aside on August 5th at 2:00 p.m., but if we  
7 don't have agenda items I'm sure we can all use the time  
8 productively and certainly we'll be getting together on August  
9 12th at 3:30 p.m. for Judge Farah. Primarily, I think Judge  
10 Farah, but also for me to hear about the coordination in the  
11 legionella discovery or any other issues that come up.

12 Well, thank you, everybody. Take good care.

13 (At 3:27 p.m., matter concluded.)

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C E R T I F I C A T E

I, Darlene K. May, Official Court Reporter for the United States District Court, Eastern District of Michigan, do hereby certify that the foregoing is a true and correct transcript, to the best of my ability, from the record of proceedings in the above-entitled matter. I further certify that the transcript fees and format comply with those prescribed by the Court and the Judicial Conference of the United States.

August 5, 2020  
Date

/s/ Darlene K. May  
Darlene K. May, CSR, RPR, CRR, RMR  
Federal Official Court Reporter  
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